MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

William Scott Dillon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 2, 2022

Court of Appeals Case No. 22A-CR-852

Appeal from the Hamilton Superior Court

The Honorable Jonathan M. Brown, Judge

Trial Court Cause No. 29D02-1809-F3-6661

Mathias, Judge.

[1] William Scott Dillon appeals the Hamilton Superior Court's revocation of his placement on work release and order that he serve that placement in the

Department of Correction. Dillon raises three issues for our review, which we restate as follows:

> I. Whether the projected release date stated in the residential program contract between Dillon and Hamilton County Community Corrections ("HCCC") prohibited the trial court from sentencing Dillon to the Department of Correction beyond that date.
>
> II. Whether the trial court violated Dillon's due-process rights when it revoked his placement with HCCC.
>
> III. Whether the trial court abused its discretion when it ordered Dillon to serve the balance of the work-release component of his sentence in the Department of Correction.

[2] We affirm.

Facts and Procedural History

[3] In September 2019, a jury found Dillon guilty of Level 3 felony rape and Level 6 felony sexual battery. The next month, the trial court sentenced Dillon to an aggregate term of ten years, with three years executed in the Department of Correction, three years on "work release as a direct and open commitment" with HCCC,[1] and four years suspended, two of which were suspended to probation. Appellant's App. Vol. 2, pp. 32-33.

[1] We acknowledge the State's assertion on appeal that this part of Dillon's sentence "may have been an abuse of discretion" as "a trial court may not order a defendant to serve a direct placement in a community

[4] Less than one year later, Dillon moved to modify his sentence without the consent of the prosecuting attorney in accordance with Indiana Code section 35-38-1-17(k) (2020). The trial court held a hearing on Dillon's motion, after which it agreed to modify his sentence in part. In particular, the court ordered that the remainder of Dillon's executed time in the Department of Correction "be modified and added to [Dillon's] community corrections" placement. *Id.* at 53-54. In doing so, the court stated: "should [Dillon] violate the contractual terms of his HCCC placement or the conditions of probation, the Court will not hesitate to revoke his HCCC or probation placement[] and return him" to the Department of Correction. *Id.* at 54. In all other respects, the court left Dillon's original sentence unchanged.

[5] In April 2021, Dillon executed his residential program contract with HCCC. That contract stated that Dillon had a "projected release date" of January 7, 2022. *Id.* at 57 (capitalization and bold font removed). That contract further provided in relevant part as follows:

> 14. All Residential Program participants are required to provide verification of work hours . . . on a weekly basis or upon request. . . .

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corrections program when the defendant has committed a sex crime under Indiana Code 35-42-4." Appellee's Br. at 21 n.4; *see* Ind. Code § 35-38-2.6-1(b)(1) (2019). We further acknowledge that Dillon's argument on appeal appears to request "a return to that placement . . . ." Appellee's Br. at 21 n.4. While we have concerns with the court's sentencing order in this respect and Dillon's request for relief, given our resolution on the merits of Dillon's arguments in this appeal, we need not address those concerns and we express no opinion on them.

15. . . . Scheduled hours are to be provided to [HCCC] . . . . I understand that [HCCC] is the only agency that may approve any work schedule and/or changes in my work schedule. I understand that any schedule change requires 24 hour notice . . . .

16. I agree to allow [HCCC] personnel to monitor my employment by examining my timecards, contacting my supervisor, and conducting worksite visits. . . .

* * *

19. I agree to travel in a direct route to and from my place of employment . . . without making any stops or "side trips" . . . .

* * *

22A. If I become unemployed during the term of my Residential Program sentence, I shall immediately notify my Field Services Coordinator. That Field Services Coordinator shall commence an investigation into the reasons for my unemployment and shall report the results of that investigation to the Director of Supervision Services . . . .

* * *

During my term in the Residential Program, if a determination is made that there is probable cause to believe that I have violated any of these conditions, I may be removed from participation in this program and may be incarcerated pending further Court determination. *I further acknowledge that if the Court finds that I have violated any one of these conditions, the Court may, after a hearing, revoke the suspended sentence and impose any sentence it may have originally imposed, modify my conditions, or continue my placement*.

Id. at 58-60 (emphasis added).

[6] On November 13, 2021, Dillon was fired from his employment at a pizzeria in Broad Ripple. However, Dillon did not notify his Field Services Coordinator, Bill McNiff, of the termination in employment. Instead, over the course of the next week, Dillon continued to check out of his residency program for the purported purpose of going to work, only to sit in his car near the pizzeria—Dillon was wearing a location-monitoring device—"binge watching Netflix." Tr. p. 69.

[7] On November 20, McNiff made an unscheduled visit to the pizzeria to check on Dillon. McNiff then learned that Dillon had been unemployed for the last week. Still, on November 22, Dillon called his wife, who also worked at the pizzeria, and in a recorded call he asked her to access the pizzeria's timecard system and record dates and times that Dillon had purportedly worked there during the week he was unemployed. That timecard was submitted to HCCC.

[8] The State filed a notice of placement violation with the trial court on the ground that Dillon had accrued more than ninety-three hours of unaccounted-for time away from HCCC. At an initial hearing, Dillon admitted the allegation and claimed he had been working, but he could not obtain the timecards from the pizzeria to prove it because he no longer worked there. The trial court accepted Dillon's admission and continued the fact-finding hearing. At the next hearing, the State introduced evidence that Dillon had been terminated from his

employment on November 13 and had caused a false timecard to be submitted to HCCC.

[9] The trial court revoked Dillon's placement with HCCC and ordered him to serve that portion of his sentence in the Department of Correction. The court did not modify the final four suspended years of Dillon's original sentence. The court subsequently denied Dillon's ensuing motion to correct error, and this appeal ensued.

I. Whether the Trial Court had Discretion to Order Dillon to Serve the Balance of his time with HCCC in the Department of Correction.

[10] We first address Dillon's argument on appeal that his residential placement contract limited the trial court's authority to order him to serve the balance of his time with HCCC in the Department of Correction. In particular, Dillon asserts that, because his contract with HCCC stated that he had a "projected release date" of January 7, 2022, the trial court could not revoke his placement with HCCC after that purported release date.

[11] Dillon cites no authority in support of his position on this issue. Indeed, our case law has rejected a similar argument before. As we have explained:

> Community corrections is "a program consisting of residential and work release, electronic monitoring, day treatment, or day reporting . . . ." Ind. Code § 35-38-2.6-2. Placement in community corrections is at the sole discretion of the trial court, *see* Ind. Code § 35-38-2.6-3(a) (court "may . . . order a person to be placed in a community corrections program"); a defendant's

placement there is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Million v. State*, 646 N.E.2d 998, 1001 (Ind. Ct. App. 1995). If a defendant violates the terms of his placement in community corrections, the court may:

> (1) Change the terms of the placement.
>
> (2) Continue the placement.
>
> (3) Revoke the placement and commit the person to the department of correction for the remainder of the person's sentence.

Ind. Code § 35-38-2.6-5.[2]

. . . Accordingly, if [the defendant] violated the terms of his placement with community corrections, the court could revoke any remaining time with community corrections, *see* Ind. Code § 35-38-2.6-5, regardless [to] which specific community corrections activity he was assigned . . . when the violation occurred.

Toomey v. State, 887 N.E.2d 122, 124 (Ind. Ct. App. 2008).

[12] Thus, the Indiana Code squarely permitted the trial court to revoke Dillon's placement and commit him to the Department of Correction for the remainder of his sentence. And Dillon's contract with HCCC expressly informed him of the trial court's authority to do so, stating: "I . . . acknowledge that if the Court

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[2] Although since amended, the material terms of this statute, as relevant to the instant appeal, remain the same. *See* I.C. 35-38-2.6-5 (2020).

finds that I have violated any one of these conditions, the Court may, after a hearing, revoke the suspended sentence and impose any sentence it may have originally imposed . . . ." Appellant's App. Vol. 2, p. 60. Accordingly, Dillon's argument on this issue is without merit.

II. Whether the Trial Court Violated Dillon's Due-Process Rights.

[13] We next address Dillon's assertions that the trial court denied him his due-process rights. In particular, Dillon asserts that the trial court violated his due-process rights for three reasons: it did not provide him with a written statement as to the evidence relied on and the reasons for the revocation of his placement; it revoked his placement for a reason other than the basis for the notice of violation; and it did not act as a neutral and detached decision-maker. We address each argument in turn.[3]

[14] We first consider Dillon's argument that the trial court failed to provide him with a written statement as to the evidence relied on and the reasons for the revocation of his placement. Dillon's due-process rights in the trial court included being provided with "a written statement by the factfinder as to the evidence relied on and reasons for revoking" the defendant's placement. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. "A transcript of

[3] The State argues that Dillon's first two due-process issues are waived because he did not raise them below. But those two arguments go to the final judgment itself; the State does not suggest how Dillon could have preserved them by raising them prior to that judgment. We therefore decide Dillon's arguments on their merits.

the evidentiary hearing, although not the preferred way of fulfilling the writing requirement, is sufficient if it contains a clear statement of the trial court's reasons for revoking" the defendant's placement. *Puckett v. State*, 956 N.E.2d 1182, 1186 (Ind. Ct. App 2011).

[15] Here, the trial court's statement of its reasons at the conclusion of the hearing was sufficient to satisfy Dillon's right to have a written statement of the reasons for the court's decision and the evidence underlying it. The court stated:

> I don't like unaccounted-for time. I believe in the Community Corrections program. I believe that the program serves a very important part in our corrections process. It enables able-bodied people to work, earn income. They don't have to be warehoused in a cinder block cell 24 hours a day, 365 days a year, and subject to constant monitoring. There's a lot of liberty that comes with being in the [HCCC] or any community corrections program . . . . And as a policy, when participants in those programs violate, it really puts judicial officers in a precarious position, particularly when we strongly believe that that program serves a great purpose . . . .
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> It also . . . provide[s] a benefit to taxpayers[] because it costs a lot less . . . to monitor folks than it does through . . . incarceration . . . . I know you had some time in the prison, and I got you out, and I went out on a little bit of a limb for you, and things were progressing, and then the train just went right off the tracks in November. . . .
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> * * *
>
> [T]he thing is . . . that you lost your job. . . . I've had a lot of difficulty understanding why you would go back and sit in a

> parking lot. Like, it makes literally no sense to me . . . . And this was . . . a serious offense, sir. You were convicted by a jury of the charges you were charged with. And so the State also has a basis for asking for you to serve the rest of your sentence at the Department of Correction because of the nature of the charges that you were convicted of . . . .

Tr. pp. 91-93. We conclude that the trial court's statements, as reflected in the transcript, satisfied Dillon's due-process rights.

[16] We thus turn to Dillon's assertion that the trial court violated his due-process rights when it revoked his placement on grounds not alleged in the State's notice of violation. We conclude that Dillon's argument on this issue is not supported by cogent reasoning. The State's notice of violation plainly alleged that Dillon had accrued more than ninety-three hours of unaccounted-for time, and on that basis the State sought the revocation of his placement. Appellant's App. Vol. 2, p. 62. And, as excerpted above, the trial court found that Dillon's unaccounted-for time was the reason the court revoked his placement. Dillon's argument on this issue is without merit.

[17] Finally, we turn to Dillon's argument that the trial court did not act as a neutral and detached decision-maker when it revoked his placement. On this issue, Dillon notes the trial court's statement in its first modification of his sentence that, "should [Dillon] violate the contractual terms of his HCCC placement or the conditions of probation, the Court will not hesitate to revoke his HCCC or probation placement[] and return him" to the Department of Correction. *Id.* at 54. And in revoking Dillon's placement with HCCC on the State's notice of

violation, the court emphasized that warning, telling Dillon, at the conclusion of the hearing, that, "[i]n some ways, Mr. Dillon, you've kind of put me in a corner, and I don't like being put in a corner because it feels like I don't have much of a choice. I need to be consistent in my rulings." Tr. p. 91.

[18] We conclude that the trial court's statements do not demonstrate that it was unable or unwilling to be a detached and neutral fact-finder or decision-maker. The court's original warning to Dillon was for his benefit; the court made clear that the grace of Dillon's placement would be on a short leash, and the trial court had the discretion to make that warning clear to him. And, assuming for the sake of argument that the court's statement about "being put in a corner" even referenced that original warning, nothing about that statement demonstrates that the court did not or could not fairly and neutrally consider the evidence or decide the case. Indeed, the court's statement was made at the close of the hearing, after the court had heard the evidence and arguments and made its decision. We reject Dillon's due-process arguments.

III. Whether the Trial Court Abused its Discretion when it Ordered Dillon to Serve the Balance of his Placement with HCCC in the Department of Correction.

[19] We thus turn to the last of Dillon's arguments on appeal, namely, whether the trial court abused its discretion when it ordered him to serve the balance of his placement with HCCC in the Department of Correction. We review a trial court's sentencing decision in a revocation proceeding for an abuse of discretion. *Puckett*, 956 N.E.2d at 1186. An abuse of discretion occurs if the trial

court's decision is against the logic and effect of the facts and circumstances before the court. *Id.*

[20] Dillon argues that the trial court abused its discretion in ordering him to serve the balance of his time with HCCC in the Department of Correction because this was "a first violation" and "was a technical violation." Appellant's Br. at 13. We cannot agree. Dillon failed to report the termination of his employment as required. Instead, he continued to leave his residential placement over the course of a week, which leave was not authorized. He then attempted to cover-up his unauthorized time away by causing false timecards to be made and submitted to HCCC. And, when he initially admitted to the violation, he attempted to downplay his violation to the court by stating that he had actually been working but he could not get the timecards from the employer because he had since been terminated.

[21] We therefore agree with the State that Dillon's "explanations are unmeritorious and exemplify [his] disregard for the criminal justice system." Appellee's Br. at 17. We further agree with the State that Dillon's actions "undercut[] the very purpose of the work-release program—to supervise a defendant while he works in the community." *Id.* at 18. Thus, we cannot say that the trial court abused its discretion when it ordered Dillon to serve the balance of his placement with HCCC in the Department of Correction, and we affirm the trial court's judgment.

Conclusion

[22] For all of the above-stated reasons, we affirm the trial court's judgment.

[23] Affirmed.

Robb, J., and Foley, J., concur.